

WILLIAM EASBY—HEIRS OF.

[To accompany bill H. R. No. 655.]

FEBRUARY 2, 1857.

Mr. BISHOP, from the Committee of Claims, made the following

REPORT.

*The Committee of Claims, to whom was referred the petition of William Easby, surviving partner of the firm of Easby & Hanly, report:*

The petitioner represents that, agreeably to the order of Colonel De Russey, of the 17th of March, 1842, they shipped on board the schooner Elizabeth three hundred and six barrels of lime, for the use of Fortress Monroe; and that on her arrival at Old Point Comfort, in Virginia, she grounded, sprung a leak, took fire, and the lime was destroyed; that Colonel De Russey refused to pay for the lime, on the ground, as alleged by him, that the petitioners were bound to deliver the lime at *Fortress Monroe at their own risk*. The committee have examined the papers connected with this transaction, and can find nothing in them to justify the conduct of Colonel De Russey in refusing payment. The lime was shipped for and on account of Fort Monroe by the following order of Colonel De Russey:

“OLD POINT COMFORT, *February 17, 1842.*

“GENTLEMEN: I have to request that you will *ship, on account of Fort Monroe*, three hundred barrels of your lime, to be received on or about the 1st of March next.

“I am, with respect, gentlemen, your obedient servant,

“R. E. DE RUSSY,

“*Lieutenant Colonel of Engineers.*

“MESSRS. EASBY & HANLY,  
*Washington.”*

And the bill of lading taken by the shippers of the lime is in the following words, viz:

“Shipped, in good order and well conditioned, by Easby & Hanly, on board the good schooner called the Elizabeth, whereof is master, for the present voyage, Peter Jones, now lying in the port of Washington, and bound for Old Point, Virginia, viz: three hundred and six barrels of lime, and to be delivered in the like good order, and well conditioned, at the aforesaid port of Old Point, (the danger of

the sea only excepted,) unto Colonel De Russey, or his assigns, *he or they paying freight for the said lime* fifteen cents per barrel.

"In witness whereof, the master of the said vessel hath affirmed to three bills of lading, all of this tenor and date, one of which bills being accomplished, the other two stand void.

"Dated at the city of Washington this 4th day of March, 1842.

"PETER JONES."

Colonel De Russey, in a letter written to Colonel Joseph G. Totten, Chief Engineer, United States, dated the 13th of January, 1844, labors to show that the shippers were considered by him, as well as themselves, as incurring all the risk of all the shipments made to him of lime from the 16th of March, 1839, to 1840; and to prove that the lime in question was in like manner shipped at the risk of the shippers, he makes the following postscript at the close of his letter:

"P. S.—A bill of lading is also sent to the department, to show that the freight and all other expenses were incurred by the *shippers*, and that one dollar and fifty cents charged per barrel for the lime was the price fixed by the gentlemen upon the delivery of the article at Old Point Comfort. D. R."

In this postscript Colonel De Russey seems to rely upon the bill of lading, copied into this report, as evidence that the shippers held themselves liable for all the risk and expenses incurred by the voyage. The committee, however, can discover no such evidence in the *bill of lading above quoted* as would prove "that the freight and all other expenses were incurred by the *shippers*," unless they were to adopt the construction which it is too evident was given to that instrument by Colonel De Russey, that is, taking the promise of the captain of the schooner, given in the usual form of a bill of lading, to deliver the cargo in like good order at Old Point Comfort, (the dangers of the sea only excepted,) as the *promise of the shippers*. It is owing to this mistake, probably, on the part of Colonel De Russey, that the claimant has been kept so long out of his money. The order of the colonel to *ship the lime for and on account of Fort Monroe* is positive and unconditional, and the practice of merchants places the risk of a voyage by sea upon the person ordering goods. When a merchant in New York ships goods to order of a merchant in Richmond, no one will dispute that the risk and expense of the voyage is incurred by the merchant ordering them, except so far as the risk may be shared by the captain of the vessel, in his capacity of *common carrier*; and in that capacity the captain of this vessel, for his inattention in suffering his vessel to get aground without a pilot, might probably have been held liable for the loss of the lime. Be that as it may, there is nothing in this case to show that the loss of the lime in question should be borne by the claimant; and therefore the committee report a bill for his relief.

